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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, DC 20515-6415

SUBCOMMITTEE ON LEGISLATION

FOR IMMEDIATE RELEASE -- JUNE 5, 1987
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On June 10, 1987, at 9:30 a.m., the Subcommittee on Legislation of the Permanent Select Committee on Intelligence will conclude hearings on H.R. 1013, a bill intended to clarify existing legislation requiring that the Congress be given prior notice of covert actions. Previous hearings were held on April 1 and April 8. The Subcommittee on Legislation is chaired by Representative Matthew McHugh (D-NY), a co-sponsor of H.R. 1013.

H.R. 1013 would require that the House and Senate Intelligence Committees be given prior notice of covert actions, except when time is of the essence and "extraordinary circumstances affecting the vital interests of the United States" are involved. In such cases, where time does not permit prior notice, notice can be delayed for up to 48 hours. The bill would retain a provision of existing law which, in certain circumstances, permits the required prior notice to be given to the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House, and the Chair and the Ranking Minority Member of the two intelligence committees rather than to the full membership of the committees.

H.R. 1013 was introduced by Representative Louis Stokes (D-Ohio), Chairman of the Permanent Select Committee on Intelligence, and Representative Edward P. Boland (D-Mass.), a former Chairman of the Committee. In introducing H.R. 1013 on February 4, Chairman Stokes, referring to the Iran-Contra initiative, noted:

> The intent to evade congressional oversight is clear; the disastrous result is equally clear. It has come in the one area of secret government activity -- covert action -- where effective congressional oversight is imperative, and where congressional access to information must be unfettered. If the Intelligence Committees are not informed of covert actions, then no one in Congress is informed and no oversight is performed. If the Intelligence Committees are not permitted to offer sound advice and constructive criticism before an action is initiated, then rarely will any such advice or criticism be heard from anyone who does not have a direct operational or policy connection to the particular covert action contemplated.

The hearing will be held in Room 2237 Rayburn House Office Building. Testifying on behalf of the Administration will be Michael H. Armacost, Under Secretary of State for Political Affairs, and James H. Taylor, Executive Director of the Central Intelligence Agency. The public is invited.

A copy of Chairman McHugh's opening statement is attached.

Attachment

OPENING STATEMENT
OF
REPRESENTATIVE MATTHEW F. MCHUGH
ON THE THIRD DAY OF HEARINGS
JUNE 10, 1987

Today the subcommittee concludes its hearings on legislative proposals designed to improve Congressional oversight of covert actions. More particularly, the proposals before us would amend current law to make more specific the requirements governing notice to Congress when the President authorizes a covert action.

To briefly restate current law, the statutes now provide that, as a general rule, the President must notify the House and Senate Intelligence Committees prior to undertaking a covert operation that he has authorized. However, the law recognizes two limited exceptions to this general rule. If the President determines that there are "extraordinary circumstances affecting vital interests of the United States," he may limit prior notice to a leadership group of eight members of the House and Senate (the so-called "gang of eight"). The law recognizes, as a second exception, that in certain undefined cases the President may choose not to provide prior notice to anyone in Congress, but in such cases the President must provide the Intelligence Committees with notice of the covert action in "a timely fashion", together with a statement explaining why prior notice was not given.

Many of us in Congress believe that the President disregarded the spirit if not the letter of the law when he authorized the covert sale of military weapons to Iran. In that case the President conducted a covert operation for at least 10 months without notifying anyone in Congress. He not only failed to provide prior notice of this operation, he provided no notice whatsoever. We learned of the operation many months after it was begun only because it was disclosed in a foreign publication.

In this case the President apparently decided that circumstances justified his dispensing with prior notice. He must have further determined that not providing notice for at least 10 months after the operation began did not violate his legal obligation to provide "timely" notice after the fact. In my judgment, that was a wholly unreasonable interpretation of the law. However, presumably the President would argue that he was not violating the timeliness requirement.

These two views of what constitute timely notice are very divergent. If Congress accepts the President's view, Congress can be totally deprived of information regarding major policy for a substantial period of time. For those of us who care about Congress' constitutional responsibilities, this is simply not acceptable.

The two bills before the subcommittee address this problem and seek to make more precise the rules governing notice to Congress. H.R. 1371,

introduced by Mr. Mineta of California, would require prior notice of all covert operations without exception. H.R. 1013, introduced by Mr. Stokes of Ohio and others, would require prior notice in almost all cases, but would give the President discretion to defer notice of the operation until after its inception where time is of the essence and where there are extraordinary circumstances affecting the vital interests of the United States. However, in such cases the legislation would require the President to notify the Intelligence Committees within 48 hours after the covert action began. Both bills would retain the President's right to limit prior notice to the leadership group of eight if there are extraordinary circumstances affecting the vital interests of the United States.

A major point of contention in prior hearings has been the provision in H.R. 1013 which, in those cases where the exigencies of time do not permit the President to give prior notice, would define timely notice as 48 hours after the covert operation has begun. Some witnesses have argued that a President needs more discretion. If a President exercises discretion reasonably, a vague term like "timely notice" can serve quite adequately. But when a President deliberately uses such a broad guideline to completely shut Congress out of the policymaking and oversight process, it is a serious matter for Congress and the country. That is what happened in the case of the Iran arms sales, and unfortunately it is not an isolated incident. Congress passed the Boland amendment with the very clear purpose of prohibiting our government from extending military aid to the Nicaraguan contras, directly or indirectly. In recent weeks the President has argued that the Boland amendment was ambiguous; that while it may have prohibited some agencies of government from providing aid, it did not apply to the President or to the National Security Council. Such an argument, employed to rationalize a pattern of conduct designed to get around the clear intent of Congress, does not inspire confidence. If Congress is serious about its proper role under the Constitution, it cannot be inert in the face of such misinterpretations of law. It has no choice but to define as expressly as possible what is intended.

I have no doubt that the Administration witnesses who testify today will disagree, but that is the context in which the two bills before us have been introduced.